BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT; GRANADA HILLS CHARTER HIGH SCHOOL	OAH CASE NO. 2011081103 ORDER GRANTING LAUSD'S MOTION TO RESET TIMELINES AND HOLDING GHCHS' MOTION TO DISMISS IN ABEYANCE UNTIL TIME TO FILE NOI HAS PASSED

On August 29, 2011, Student filed a Request for Due Process Hearing (complaint) naming Los Angeles Unified School District (LAUSD) and Granada Hills Charter High School (GHCHS) as respondents. The complaint sought reassignment of Student from one English class to another. It alleged that Student's assigned English teacher was causing him anxiety and other distress; that Parents and this particular English teacher had a negative pre-existing history involving another sibling; and that Respondents' refusal to reassign Student constituted a denial of a free appropriate public education (FAPE). The complaint alleged that Student had a 504 plan in place to provide accommodations for a medical condition. It did not allege that Student had an individualized educational program (IEP) in place, nor that he had ever been assessed for, or made eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.).

On September 21, 2011, GHCHS filed a Motion to Dismiss on the grounds that the Office of Administrative Hearing (OAH) lacks jurisdiction over the issues stated in the complaint. The Motion attached a declaration attesting that Student does not have an IEP in place, nor has he ever been made eligible for special education and related services under the IDEA.

On September 23, 2011, LAUSD filed a Motion to Reset Timelines on the grounds that Student had not timely served the complaint on the respondents. As discussed below, the Motion to Reset Timelines is granted. The Motion to Dismiss is held in abeyance until the time to file a Notice of Insufficiency has elapsed.

ANALYSIS

The purpose of the IDEA is to "ensure that all children with disabilities have available to them a FAPE, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child."

(20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code.

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A). The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

Student filed the complaint on August 29, 2011, but did not timely serve it on either of the respondents. Therefore LAUSD's Motion to Reset Timelines is well-taken, and is granted. Because LAUSD has moved to have the timelines reset, GHCHS's Motion to Dismiss is premature, as it cannot be determined yet whether the complaint is sufficient. Accordingly, GHCHS' Motion to Dismiss is held in abeyance until the respondents' opportunity to file a timely Notice of Insufficiency has elapsed.

ORDER

1. LAUSD's motion to extend procedural timelines is granted.

2. All previously set dates in this matter are vacated and the timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence on the date of this Order.

3. GHCHS' Motion to Dismiss is held in abeyance until the time to file a Notice of Insufficiency has elapsed.

Dated: September 29, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings